No. 89-431

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

YELLOW FREIGHT SYSTEM, INC.,
Petitioner,

v.

COLLEEN DONNELLY,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF AMICUS CURIAE OF THE EQUAL EMPLOYMENT ADVISORY COUNCIL IN SUPPORT OF THE PETITIONER

ROBERT E. WILLIAMS
DOUGLAS S. McDOWELL
GAREN E. DODGE *
McGUINESS & WILLIAMS
Suite 1200
1015 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 789-8600
Attorneys for Amicus Curiae Equal Employment Advisory Council

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

No. 89-431

YELLOW FREIGHT SYSTEM, INC.,
Petitioner,
v.
COLLEEN DONNELLY,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF AMICUS CURIAE OF THE EQUAL EMPLOYMENT ADVISORY COUNCIL IN SUPPORT OF THE PETITIONER

The Equal Employment Advisory Council, with the written consent of the parties, respectfully submits this brief as amicus curiae in support of the Petitioner. The letters of consent have been filed with the Clerk of this Court.

INTEREST OF THE AMICUS CURIAE

The Equal Employment Advisory Council (EEAC or Council) is a voluntary nonprofit association organized to promote sound government policies pertaining to employment discrimination. Its membership comprises a broad segment of the employer community in the United States, including both individual employers and trade associations. Its governing body is a board of directors composed of experts in equal employment opportunity. Their combined expertise gives the Council a unique depth of

understanding of the practical and legal aspects of equal employment policies and requirements. The members of the Council are committed to the principles of nondiscrimination and equal employment opportunity.

As employers, the Council's members are subject to the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e *et seq.* Most of EEAC's members operate in more than one state, and are thus concerned that Title VII will not be uniformly interpreted and enforced should this Court overturn the rule of law in four Circuits, and instead adopt the view of the Seventh Circuit below—that jurisdiction over Title VII claims does not rest exclusively with the federal courts.

It is the experience of the amicus that federal courts have more experience than state courts in administering Title VII's intricate procedures, and that federal courts are more hospitable to federal claims generally. In contrast, state courts have more experience in interpreting their own state human rights statutes—which often differ from Title VII, most notably with regard to the availability of jury trials and compensatory damage awards. Accordingly, EEAC has a direct interest in one of the issues presented in this case: whether federal courts have exclusive jurisdiction over Title VII claims, or whether state and federal courts have concurrent jurisdiction.

Because of EEAC's interest in Title VII cases generally, it has filed briefs amicus curiae to this Court in *Wards Cove Packing Co. v. Atonio*, 109 S. Ct. 2115 (1989); *Watson v. Fort Worth Bank & Trust*, 108 S. Ct. 2777 (1988); *United States Postal Service Board of Governors v. Aikens*, 460 U.S. 711 (1983); *Kremer v. Chemical Construction Corp.*, 456 U.S. 461 (1982) (specifically discussing, but not deciding, whether Title VII jurisdiction is limited to federal courts); *Texas Dept. of*

Community Affairs v. Burdine, 450 U.S. 248 (1981); *Furnco Construction Co. v. Waters*, 438 U.S. 567 (1978); and *International Brotherhood of Teamsters v. United States*, 431 U.S. 324 (1977), among others.[1] Accordingly, because of its past experience with these issues, the Council is well qualified to brief the Court in this case.

STATEMENT OF THE CASE

Colleen Donnelly, alleging that Yellow Freight committed sex discrimination in failing to hire her as a dockworker, filed charges with the Equal Employment Opportunity Commission (EEOC) in March of 1985. On March 15, she received from the EEOC a letter giving her the right to sue within 90 days. But instead of filing a federal suit, Donnelly filed a state court suit alleging sex discrimination in violation of the Illinois Human Rights Act. When Yellow Freight filed a motion to dismiss because she had failed to exhaust her administrative remedies, Donnelly filed a motion to amend her complaint to add a Title VII count. On August 9, the state court dismissed the state claim, but continued her motion to file the amended Title VII complaint. Yellow Freight then removed the case to federal court.

Donnelly again attempted to amend her complaint—this time with the federal district court—but Yellow Freight argued that the Title VII claim had not been filed within 90 days of receipt of the right-to-sue letter. Yellow Freight argued that Title VII jurisdiction is exclusively federal, and that any filing in a state court cannot toll Title VII's 90-day complaint filing requirement. Don-

[1] EEAC has also filed briefs in several other cases cited by the Seventh Circuit and the parties herein, including *EEOC v. Liberty Trucking*, 695 F.2d 1038 (7th Cir. 1982); *Mein v. Masonite*, 109 Ill.2d 1, 44 FEP Cases 189 (Ill. 1985) and *Long v. State of Florida*, 805 F.2d 1542 (11th Cir. 1986), *rev'd on other grounds*, 108 S.Ct. 2354 (1988) (briefs filed with the 11th Circuit, as well as with this Court in support of the petition for a writ of certiorari and then again on the merits).

nelly finally filed her Title VII claim a full six months after the initial right-to-sue letter, when the district court granted her motion to file the amended complaint. The court then denied Yellow Freight's motion to dismiss.

The Seventh Circuit affirmed the district court's decision in relevant part. Recognizing that Donnelly did not file her Title VII claim in federal court within 90 days of the right-to-sue letter, the court nevertheless ruled that the state courts have concurrent jurisdiction over Title VII claims. *Donnelly v. Yellow Freight System, Inc.*, 874 F.2d 402, 405-409 (1989). Specifically, the Seventh Circuit found that the "presumption" in favor of concurrent jurisdiction had not been overcome, even though the court noted that the relevant provisions of Title VII's language and history contain references only to federal (and not state) courts, and that all other courts of appeals that had ruled on the issue had found jurisdiction to be exclusively federal. The Seventh Circuit went on to opine that state court jurisdiction is not incompatible with federal interests because state courts will uniformly interpret Title VII, because state courts are not incompetent to adjudicate such claims, and because state courts will be just as hospitable to federal claims as are the federal courts.

SUMMARY OF ARGUMENT

Although this Court recognizes a presumption that federal and state courts exercise concurrent jurisdiction over federal claims, that presumption is rebutted when any one of the standards established in *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473 (1981), is met. At least two of the *Gulf Offshore* standards are met with respect to Title VII herein. First, the presumption of concurrent jurisdiction over Title VII claims is rebutted because Title VII's language mentions only federal courts, and because the law's procedural structure—governing, for

example, appeals, the granting of temporary restraining orders, and the enforcement of conciliation agreements—makes sense only when state courts are excluded from the process. In addition, all references in the Congressional debates during the enactment of Title VII and its amendment in 1972 refer to federal, and not state courts. Moreover, *dicta* found in several decisions of this Court, and in the reasoned opinions of all courts of appeals except the Seventh Circuit, indicate that jurisdiction should be exclusively federal. *See, e.g., Valenzuela v. Kraft, Inc.*, 739 F.2d 434, 435 (9th Cir. 1984).

A second *Gulf Offshore* standard militating against concurrent jurisdiction is also present with regard to Title VII: state jurisdiction is clearly incompatible with federal interests. First, uniformity is critically important to the administration of Title VII. Concurrent jurisdiction, however, will not lead to a uniform interpretation of Title VII, particularly since state courts are not bound by federal rules of evidence and procedure or by the rulings of the federal appellate courts. Second, federal courts have vastly superior expertise in interpreting Title VII's complex administrative procedures. Indeed, several states have "ceded" their jurisdictonal authority over Title VII claims, presumably because the state courts are not prepared to administer the complexities of the statute. Third, federal courts likely will be more hospitable to Title VII claims than will state courts.

It is also clear that the Seventh Circuit improperly analogized to the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 *et seq.*, to find concurrent jurisdiction. Significantly, the ADEA procedures governing suits in the *private* sector incorporate procedures under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, which specifically authorizes state jurisdiction. The more analogous ADEA procedures, those that govern suits by *federal* employees, retain jurisdiction exclusively in the federal courts. Thus, reliance upon the appropriate sec-

tion of the ADEA actually supports the idea of exclusive federal jurisdiction over Title VII claims.

Similarly, the Seventh Circuit erred in relying upon Section 301 of the Labor Management Relations Act (LMRA), 29 U.S.C. § 141 *et seq.*, since the legislative history of Section 301, unlike Title VII, specifically contemplates state jurisdiction. *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502 (1962). Again, the relevant sections of the LMRA actually support the idea of exclusive federal jurisdiction over Title VII.

ARGUMENT

I. IN ACCORDANCE WITH THE STANDARDS EXPRESSED IN *GULF OFFSHORE v. MOBIL*, THIS COURT SHOULD RULE THAT JURISDICTION OVER TITLE VII IS EXCLUSIVELY FEDERAL BECAUSE OF CONGRESS'S UNMISTAKABLE IMPLICATION IN ENACTING THE LAW, AND BECAUSE OF THE CLEAR INCOMPATIBILITY BETWEEN STATE COURT JURISDICTION AND FEDERAL INTERESTS

Although the law recognizes a presumption that both state and federal courts have jurisdiction over federal statutory claims, this Court holds that such a presumption of concurrent jurisdiction can be rebutted. Most recently, in *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473 (1981), this Court outlined the rebuttal standards under which jurisdiction will be found exclusively federal:

> In considering the propriety of state-court jurisdiction over any particular federal claim, the Court begins with the presumption that state courts enjoy concurrent jurisdiction. Congress, however, may confine jurisdiction to the federal courts either explicitly or implicitly. Thus, *the presumption of concurrent jurisdiction can be rebutted by an explicit statutory directive, by unmistakable implication from legislative history, or by a clear incompatibility between state-court jurisdiction and federal interests.*

Id. at 478 (citations omitted; emphasis added). *See also Claflin v. Houseman*, 93 U.S. 130 (1876). Significantly, this Court's use of the word "or" in the above language indicates that Yellow Freight may rebut the presumption by demonstrating the existence of only one—not all—of the *Gulf Offshore* standards.

As we now show, this Court should reverse the decision of the Seventh Circuit below since not only one, but at least two of the *Gulf Offshore* standards are present herein. First, Title VII's language and legislative history suggest exclusive federal jurisdiction and, second, there is a clear incompatibility between state court jurisdiction and federal interests in a uniform, ordered interpretation of Title VII.

A. Title VII's Language, Structure And Legislative History—As Well As Decisions By This And Other Courts—Indicate That Jurisdiction Should Be Exclusively In The Federal Courts

The language, structure and history of Title VII all clearly indicate that Congress intended that federal courts alone have jurisdiction over Title VII, thus satisfying one of this Court's *Gulf Offshore* standards. This indication of exclusive federal jurisdiction is supported in this Court's *dicta* in several other cases, and is buttressed by the decisions of all courts of appeals that have addressed the issue except the Seventh Circuit below.

1. *Title VII's Language And Procedural Structure Suggest Exclusive Federal, Not Concurrent, Jurisdiction*

Title VII's charge procedures and enforcement scheme are detailed and complex. *See* 42 U.S.C. §§ 2000e-5 through e-14; *New York Gaslight Club, Inc. v. Carey*,

447 U.S. 54, 63-64 (1980). Greatly simplified, Title VII permits an aggrieved individual to file a charge with the EEOC, or with a state or local agency authorized to process Title VII charges. If the individual does not first file his charge with an existing state agency, the EEOC must "defer" the charge to the state for at least 60 days. Upon expiration of this 60 day period, or at the conclusion of the state proceeding, the charge is returned to the EEOC.

The EEOC undertakes an investigation of the charge, and if it concludes that it is "more likely than not" that discrimination occurred, the EEOC then issues a "reasonable cause" determination and invites the respondent to conciliate. During this conciliation process, the EEOC attempts to persuade the respondent to eliminate the unlawful conduct and enter into a formal "conciliation agreement"--a commitment that can be enforced in federal court. If the EEOC finds no reasonable cause or, after finding cause and attempting without success to conciliate, decides not to file a lawsuit, it issues a right-to-sue letter, permitting the individual to bring a civil action. This initial court decision may be appealed to a United States Court of Appeals. Strict filing requirements and time constraints govern each stage of Title VII's procedural scheme. *See* Note, *Concurrent Jurisdiciton Over Title VII Actions*, 42 Wash. & Lee L. Rev. 1403, 1406-08 (1985).

Title VII's language addressing jurisdiction over the civil actions discussed above is contained at Section 706 (f)(3).[2] Under that section, "[e]ach United States district court . . . shall have jurisdiction of actions brought under this subchapter." The language suggests, but does not specifically state, that federal courts are to have exclusive jurisdiction over Title VII claims.

[2] 42 U.S.C. § 2000e-5(f)(3) states in relevant part:

> (3) *Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter.* Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. (Emphasis added.)

The examination of such a complex procedural statute, however, does not end there. Section 706(j), the provision regarding appeals, provides that "[*a*]*ny civil action brought under this section . . . shall* be subject to appeal as provided in sections 1291 and 1292,"[3] the provisions that govern jurisdiction of the United States Courts of Appeals. It would make no sense that *state* court decisions regarding Title VII should be appealable to the federal courts of appeals. As the Ninth Circuit explained:

> Congress could not have intended that actions brought in state court be appealed to the federal circuit courts. Thus section 706(i)(sic) unmistakably implies that Congress intended to vest exclusive jurisdiction in the federal courts.

Valenzeula v. Kraft, Inc., 739 F.2d 434, 435 (9th Cir. 1984).

Similarly, the relationship between Section 706(f)(2) —the provision permitting the EEOC to obtain temporary restraining orders—and the rest of Title VII makes

[3] (Emphasis added). 42 U.S.C. § 2000e-5(j) provides as follows:

> (j) Appeals
>
> Any civil action brought under this section and any proceedings brought under subsection (i) of this section shall be subject to appeal as provided in sections 1291 and 1292, Title 28.

sense only if jurisdiction is exclusively federal. The Ninth Circuit stated:

> *Section 706(f)(2)*, 42 U.S.C. § 2000e-5(f)(2) (1976), *provides that "[a]ny temporary restraining order* or other order granting preliminary or temporary relief *shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure."* Section 706(f)(2) further provides that "[i]t shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited." *Whether Congress has the constitutional power to require state courts to follow Fed.R.Civ.P. 65 and to expedite certain cases is a matter of some doubt.* P. Bator, P. Mishkin, D. Shapiro & H. Wechsler, *Hart and Wechsler's The Federal Courts and the Federal System* 571-72 (2d ed. 1973). In any event, we do not believe that Congress attempted in Title VII to regulate the procedures and priorities of the state courts. *Therefore, section 706(f)(2) also unmistakably implies that Congress intended exclusive federal jurisdiction.*

Valenzuela, 739 F.2d at 435-36 (emphasis added).

Other language contained in Title VII, such as the methods for entering into and enforcing conciliation agreements, also militates in favor of exclusive federal jurisdiction. Under Section 706(b), after a finding of "reasonable cause," the EEOC is required to "endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion." 42 U.S.C. 2000e-5(b). The EEOC may bring a civil action pursuant to Section 706(f)(1), 42 U.S.C. § 2000e-5(f)(1), if the respondent will not enter into a conciliation agreement, and also may enforce a conciliation agreement in federal court. *EEOC v. Liberty Trucking Co.*, 695 F.2d 1038, 1040 (7th Cir. 1982).

The prominence Title VII's drafters gave to voluntary compliance in the statutory scheme evinces a substantial federal interest in actions to enforce conciliation agreements. That strong federal interest is further apparent in the frequency with which the EEOC is a party to conciliation agreements and in the extensive role it plays in negotiating, approving and monitoring such agreements. *Id.* at 1043. If this Court permits state courts to entertain actions to enforce conciliation agreements, there would be a serious potential for conflict with this federal interest.

It is the *amicus*' experience, for example, that there is a greater incentive to undertake serious settlement negotiations of disputes and seek creative solution to issues if employers, charging parties and the EEOC can be reasonably certain that the Title VII will be interpreted in a consistent manner. Consistency of interpretation is far more likely to be achieved under a system of exclusive federal jurisdiction. Clearly, therefore, the language of Title VII, and the ways in which its complex procedures interplay, strongly suggest that jurisdiction over Title VII matters should be exclusively federal.

2. *Title VII's Legislative History Clearly And Unmistakably Indicates That Congress Intended That Federal Courts Have Exclusive Jurisdiction*

Title VII's legislative history is well explained in Petitioner's brief at pp. 13-32 and is not repeated herein. A brief review of that history, however, indicates that Congress clearly and unmistakably intended that the federal courts should have exclusive jurisdiction over Title VII claims.

Most significantly, Title VII's legislative history contains no mention whatsoever of state courts. Rather, "when reference was made by members of Congress to bringing actions in court, the references were to *federal court*." *Dickinson v. Chrysler Corp.*, 456 F.Supp. 43, 46 (E.D. Mich. 1978) (emphasis by court); *see Valenzuela*, 739 F.2d at 436. For example, the Interpretive Memo-

randum of Title VII's Senate floor managers, Senators Clark and Case, in discussing the enforcement procedures, states:

> If a majority of the commission determine that reasonable cause exists, *ordinarily a suit will be brought in a Federal district court* in the judicial district in which the unlawful employment practice allegedly occurred or in the judicial district in which the respondent has his principal office . . . .
>
> *If the Commission decides not to sue*, or if at any earlier stage it terminates the proceeding for any reason, *the party allegedly discriminated against may, with the written permission of one member of the Commission, bring his own suit in Federal court* . . . .
>
> *The suit against the respondent*, whether brought by the Commission or by the complaining party, *would proceed in the usual manner for litigation in the Federal courts.*

110 Cong. Rec. 7213, (1964) (emphasis added). Similarly, the 1963 House Report indicates that Section 706(f)(3) "provides that the *district courts of the United States* . . . are given jurisdiction of actions brought under this title." H.R. Rep. No. 914, 88th Cong., 1st Sess. 29, *reprinted in* 1964 U.S. Code Cong. & Admin. News, 2355, 2405 (1963) (emphasis added). In addition, individual remarks during the 1964 debates by Senators Carlson, Case, Clark, Cotton, and Humphrey, and by Representatives Cellar, McCullouch, O'Hara and Ryan, among others, all reference federal (and not state) courts. *See* Petitioner's Brief at pp. 13-18.[4]

---

[4] As explained by the court in *Dickinson*, 456 F.Supp. at 45-46, the legislative history of Section 706(c), the "deferral" language, also supports the idea that Congress intended the states to become involved at the "deferral" stage, but that the federal courts were to be the forum "of last resort." Section 706(c), 42 U.S.C. § 2000e-5(c), was introduced in the Senate as part of a substitute

Similarly, during the debates regarding the 1972 amendments, Congress expressed its intent that federal courts were to retain exclusive jurisdiction over Title VII claims. Namely, many references were made with regard to retaining an individual's right to sue in federal court, yet no reference was made to suits in state courts. *See, e.g.*, remarks of Senator Jacob Javits regarding the Dominick amendment, ultimately approved by the Senate and signed into law. H.R. Rep. 238, 92d Cong. 1st Sess., at 905, *reprinted in* 1972 U.S. Code Cong. & Admin. News, 2137 (the backlog is the heaviest "[i]n the district courts, where under the Dominick amendment suits would have to be filed. . . .")

In fact, a Title VII provision adopted as part of the 1972 amendments (which, in part, incorporates Title VII protections for federal employees) indicates unequivocally that federal courts were to have exclusive jurisdiction. That provision, 42 U.S.C. § 2000e-16(d), fully incorporates for federal employees the procedures in Sections 2000e-5(f) through (k), those adopted in 1964 for private sector employees. Congress thus obviously intended federal employees to use Section 706(f)(3) in the same manner as private sector employees. Of

---

to the proposed act. One of the sponsors of the amendment, Senator Humphrey, commented:

> *The most important changes* give greater recognition to the role of State and local action against discrimination
>
> * * * *
>
> Provisions have been inserted . . . to *give States* which have . . . fair employment practices laws . . . *a reasonable opportunity to act under State Law before the commencement of any Federal proceedings* by individuals who allege discrimination.

110 Cong. Rec. 12707-8 (1964) (emphasis added). The court in *Dickinson* cited similar comments by Senators Case and Dirksen, and concluded that "[h]ad Congress intended the Title VII litigant to enforce his rights in state court, the entire series of debates relative to the addition of the state administrative remedies would have been meaningless." 456 F.Supp. at 46.

course, Congress did not intend that federal workers were to sue the federal government in *state* court.[5] Clearly, therefore, since Congress intended that federal workers bring suits in federal (not state) court, and since federal workers are subject to the same Title VII jurisdiction language as private sector workers, Section 706(f)(3) *must* allow suits only in federal courts.

The Seventh Circuit conceded that state courts are not mentioned during the legislative debates over Title VII. 874 F.2d at 407. The court, however, discounted the clear intent of Congress for exclusive federal jurisdiction by opining that Congress discussed only federal courts because Congress merely "has the power to grant or deny jurisdiction to the federal district courts." 874 F.2d at 407. This cynical statement neglects to consider that, in enacting and amending Title VII, Congress discussed not only its *own* power over the federal courts, but how Title VII's complex procedural structure would relate to other laws. Congress did not mention state courts because Congress envisioned no role for them in Title VII civil litigation.

Clearly, the "absence of reference to the state courts, combined with Congress's affirmative references to the federal courts suggests an intent to make federal jurisdiction exclusive." *Valenzuela*, 739 F.2d at 436. Congress intended the states to have no jurisdiction whatsoever.

3. *The Decisions By This Court, And By All Other Courts Of Appeals Except The Seventh Circuit, Support The Idea Of Exclusive Federal Jurisdiction*

The clear and unmistakable Congressional implications of exclusive federal jurisdiction are further bolstered by

[5] *See Lehman v. Nakshian*, 453 U.S. 156, 164 n.12 (1981). As Senator Dominick said, "The point is, however, that every governmental agency, State, local or Federal, has rights in the federal courts." H.R. Rep. 238, 92nd Cong, 1st Sess. at 1527.

the *dicta* in several of this Court's recent decisions. Although this Court in *Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 479 n.20 (1982), indicated that it was not deciding the issue of exclusive federal jurisdiction, it did note that "federal courts were entrusted with ultimate enforcement responsibility" under Title VII. *Id.* at 468. Similarly, in *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 45 (1974), this Court noted that "federal courts have been assigned plenary powers to secure compliance with Title VII." Importantly, *Alexander*, 415 U.S. at 47, went on to list the forums available to a Title VII plaintiff. These include the EEOC, state and local agencies, and, importantly, federal courts. "Significantly, the Supreme Court made no mention of state courts." *Valenzuela*, 739 F.2d at 436.

In *New York Gaslight Club, Inc. v. Carey*, 447 U.S. at 64 (1980), this Court reiterated that the "ultimate authority" for Title VII compliance rests "in the federal courts." The Court went on to note that state remedies for discrimination are available at the "deferral" stage, but that "recourse to the federal forums is appropriate only when the State does not provide prompt or complete relief," *id.* at 65. And, as mentioned above (and as explained fully in Section IIA below), *Lehman v. Nakshian*, 453 U.S. at 164 n.12, notes that "[e]xclusive district court jurisdiction [under the federal employee provisions of the ADEA] is also consistent with the jurisdictional references in Title VII of the Civil Rights Act of 1964." Again, this is an indication that since federal employees may not sue the government in state court, and since federal employees are subject to the same jurisdictional language as private sector workers, that private sector claims also must not be brought in state court.[6]

[6] Several commenters support this view of exclusive federal jurisdiction. *See, e.g.*, Comment, *Closing the Escape Hatch in the Mandatory Withdrawal Provision of 28 U.S.C. § 157(d)*, 36 U.C.L.A. L. Rev. 417, 433 n.81 (1988) (Title VII "provides that review may

In addition, *Gulf Offshore* itself, while not a Title VII case, provides support for exclusive federal jurisdiction over Title VII claims. In *Gulf Offshore*, a worker filed a personal injury claim pursuant to the Outer Continental Shelf Lands Acts, 43 U.S.C. § 1331 *et seq.* (OCSLA). Under OCSLA, Congress had declared the outer continental shelf to be "an area of exclusive federal jurisdiction." Although federal law applied to the outer continental shelf, OCSLA, unlike Title VII herein, incorporated the "applicable and not inconsistent" laws of the "adjacent states to fill gaps in federal law." 453 U.S. at 480 & n.7. This Court ultimately found in *Gulf Offshore* that state and federal courts exercise concurrent jurisdiction. Obviously, Title VII is much different from OCSLA; under OCSLA, Congress expressly evinced its intent to rely upon preexisting state laws and procedures, while under Title VII, a new enforcement scheme was adopted and state courts were not even mentioned in the legislative debates. Moreover, under OCSLA, there is less need for uniform interpretation of laws in different areas of the country, than there is under Title VII. (See pp. 18-21, below.)

In addition, all courts of appeals that have considered the issue—except the Seventh Circuit, of course—have held that Title VII jurisdiction is exclusively federal. As discussed above, in *Valenzuela v. Kraft*, 739 F.2d at 436, the Ninth Circuit concluded, after an extensive discussion of the issue, that "Title VII actions must be brought exclusively in the federal courts." The Ninth Circuit in *Dyer v. Greif Bros., Inc.*, 755 F.2d 1391, 1393 (9th Cir. 1985), followed *Valenzuela*, noting that "jurisdiction over Title VII actions lies exclusively in the federal courts." Similarly, in *Bradshaw v. General Motors Corp., Fisher Body Div.*, 805 F.2d 110, 112 (3d Cir. 1986), the Third Circuit noted that Title VII "vests exclusive jurisdiction in the federal courts." In addition, in *Jones v. Intermountain Power Project*, 794 F.2d 546, 553 (10th Cir. 1986), the Tenth Circuit stated that "Title VII claims can be filed only in federal courts." And in *Long v. State of Florida*, 805 F.2d at 1546, a case in which EEAC participated as amicus, the Eleventh Circuit noted that "Long could not have brought his Title VII action in state court." Finally, in *Hutchings v. United States Industries, Inc.*, 428 F.2d 303 (5th Cir. 1970), the Fifth Circuit stated that "Congress . . . has made the federal judiciary . . . the *final* arbiter of an individual's Title VII grievance." *Id.* at 313-14 (emphasis by court).[7]

Accordingly, for the reasons demonstrated above, this Court should rule that Yellow Freight rebutted the "concurrent jurisdiction" presumption when it established one of the *Gulf Offshore* standards—that Congress implicitly confined jurisdiction to the federal courts through Title VII's language, legislative history and procedural structure, a conclusion that is buttressed in decisions by this Court and the reasoned decisions by various courts of appeals.

---

only be had in the federal district court. . . ."); Schenkier, *Ensuring Access to Federal Courts: A Revised Rationale for Pendent Jurisdiction*, 75 Nw. U. L. Rev. 245, 254 n.62 (1980); and C. Sullivan, M. Zimmer & R. Richards, *Federal Statutory Law of Employment Discrimination* § 3.14 (1980).

[7] The district courts are split, but several find exclusive federal jurisdiction. *See Varela v. Morton/Southwest Co.*, 681 F.Supp. 398, 400 (W.D. Tex. 1988) ("federal jurisdiction in these cases is exclusive"); *Glezos v. Amalfi Ristorante Italiano, Inc.*, 651 F.Supp. 1271, 1277 (D.Md. 1987) ("Title VII claims can be filed only in federal court"); *Dickinson v. Chrysler Corp.*, 456 F.Supp. 43 ("jurisdiction of Title VII litigation is exclusively vested in the federal courts"); and *McCloud v. National Railroad Passenger Corp.*, 25 FEP Cases 513, 515 (D.D.C. 1981). *But cf. Greene v. County School Board of Henrico County, Virginia*, 524 F.Supp. 43 (E.D. Va. 1981) (holding jurisdiction concurrent); and *Bennun v. Board of Governors of Rutgers*, 413 F.Supp. 1274 (D.N.J. 1976) (same).

B. Concurrent Federal And State Jurisdiction Over Title VII Claims Is Clearly Incompatible With Federal Interests

The presumption of concurrent jurisdiction is also rebutted by the establishment of a second *Gulf Offshore* standard that—*i.e.*, that concurrent jurisdiction is clearly incompatible with federal interests. As noted in *Gulf Offshore*, the following factors are relevant with regard to its "incompatibility" standard:

> The factors generally recommending exclusive federal-court jurisdiction over an area of federal law include *the desirability of uniform interpretation, the expertise of federal judges in federal law, and the assumed greater hospitality of federal courts to peculiarly federal claims.*

453 U.S. 473, 483-84 (emphasis added). As we now show, concurrent jurisdiction over Title VII claims is incompatible with federal interests because: 1) it is essential that Title VII be uniformly interpreted, yet the law would not be uniformly interpreted in the state courts; 2) state courts do not have the vast expertise of federal judges; and 3) federal courts will be more hospitable to federal claims than will state courts.

1. *Concurrent Federal And State Jurisdiction Will Not Foster A Uniform Interpretation Of Title VII*

The first factor cited by this Court in *Gulf Offshore* in militating against concurrent jurisdiction is the "desirability of uniform interpretation" of the law in question. 453 U.S. at 483-84. It is imperative that Title VII be interpreted uniformly, especially for companies with multistate operations. Otherwise, differing interpretations of the law will apply depending upon the locations of the facility. There is, of course, potential for conflict between the various federal courts, but this possibility is ameliorated by the ability of the federal circuits to

establish intra-circuit rules binding upon the other appellate judges and the district courts within the circuit. The federal courts thus are best equipped to achieve consistency of law.

State court decisions regarding Title VII, on the other hand, would not bind other states, nor even other courts within the same state. Differing interpretations of complex issues involving the application and meaning of Title VII provisions, EEOC guidelines, and federal court decisions inevitably would result from concurrent state court enforcement, particularly in areas in which binding federal court guidance and supervision is lacking. The resulting lack of uniform interpretation of law would confuse the application of Title VII principles, cause varying litigation results, and inhibit settlement and conciliation efforts by making employers, charging parties and the EEOC more reluctant to enter into conciliation agreements and more adversarial during the negotiations concerning the language to be employed in any proposed agreement.[8]

As a practical matter, concurrent jurisdiction also could undercut the conciliation process by encouraging the EEOC to obtain uniform interpretations in federal court by withholding approval of conciliation agreements and resolving cases only by consent decrees approved by the district courts after the institution of an action. Such

---

[8] In addition, if the idea of concurrent jurisdiction becomes the law of the land, employers with facilities in two or more states would be forced to attempt to predict on a state-by-state basis how a particular practice would fare in a particular state, as well as how a consent decree or conciliation agreement would be construed. The greater expertise of the federal courts in complex Title VII matters such as the validity of hiring goals or selection procedures and the ability of the national court system to resolve conflicts between the districts and circuits would facilitate the formulation of a consistent body of law, as well as enable the parties to make across-the-board, informed decisions concerning the language to be employed and the consequences of a violation of the agreement.

an approach would produce less than serious attempts to conciliate, contrary to Title VII's statutory mandate. It also would slow down the process, increase the case load of the federal courts, and force alleged victims of discrimination to wait much longer to receive compensation and other remedies.

Despite these policy considerations, the Seventh Circuit was quick to find that Title VII will be uniformly interpreted by state courts. It stated:

> There is no reason to believe that concurrent jurisdiction will lead to the arbitrary development of Title VII law. There already exists a great volume of Title VII law developed by the Supreme Court and lower federal courts and the states are bound by the Supremacy Clause to follow federal law.

874 F.2d at 407. In its Opposition to the Petition for a Writ of Certiorari, Respondent similarly argues that "decisions on the merits of the case will be the same regardless of the forum." Op. Cert. at 6.

The Seventh Circuit and the Respondent, however, miss one major point. Although states are bound by federal substantive law in interpreting Title VII, they are not bound by the Federal Rules of Civil Procedure and the Federal Rules of Evidence. *See Valenzuela*, 739 F.2d at 436. The Ninth Circuit in *Valenzuela*, for example, noted that Title VII specifically incorporates Fed.R.Civ.P. 65 for the issuance of temporary restraining orders, but that states are not so governed. 42 U.S.C. § 2000e-5 (f)(2). It is obvious, therefore, that restraining orders likely will be granted or denied under different circumstances depending upon whether the Title VII claim is heard by a state or federal court. As a practical matter, Title VII and other employment discrimination cases are often won or lost based upon such procedural rules. Concurrent jurisdiction is thus bound to lead to developments in the law that are not always uniform.

2. *The Vast Expertise Of Federal Courts Over The Adjudication Of Title VII Claims Favors Exclusive Jurisdiction*

The second factor discussed in *Gulf Offshore* recommending exclusive federal jurisdiction is "the expertise of federal judges in federal law." 453 U.S. at 484. The Seventh Circuit stated the inquiry as follows:

> *Although it is true that at this point in time federal judges may have developed greater expertise with respect to Title VII claims, there is no reason to presume state courts are not competent to adjudicate these issues.* Such a notion overlooks the obvious; most states have enacted employment discrimination laws, which are routinely litigated in state courts, and state court judges are accordingly quite familiar with discrimination issues.

874 F.2d at 407-408 (emphasis added).

First, this Court's inquiry in *Gulf Offshore* addresses in general whether federal courts have greater expertise in applying a certain federal law, yet the Seventh Circuit appears to concede that federal judges are the more experienced. The inquiry ought to end there.

The Seventh Circuit, however, subtly but erroneously changed the inquiry into whether state judges are *incompetent* even to address the issues. No one is suggesting that state judges are "not competent"—and the amicus declines to hold up the straw man that the Seventh Circuit has knocked down. The real issue is whether state judges uniformly possess the experience with the intricate, finely-balanced procedural scheme contained in Title VII. It is clear that they do not. Indeed, as two commenters have noted:

> Since the first effective establishment in 1875 of general federal question jurisdiction in the lower federal courts, those courts have developed a broad expertise in dealing with problems and applications of

> federal law. At the same time, state judges have become less exposed to the intricacies of federal substantive law.

Redish and Muench, *Adjudication of Federal Causes of Action in State Court*, 76 Mich. L. Rev. 311, 314 (1976). *See, e.g., Study of the Division of Jurisdiction Between State and Federal Courts*, American Law Institute, 166-67 (1969); Mishkin, *The Federal "Question" in the District Courts*, 53 Colum. L. Rev. 157, 158-60 (1953).

To be sure, the Seventh Circuit is correct when it notes that many states have enacted employment discrimination laws. But none of these laws contains the complex procedural machinery found in Title VII. Moreover, many of the state laws differ from Title VII in that they provide for jury trials or different remedies—such as compensatory and punitive damages. Accordingly, it is beyond cavil that state judges, even those in states with their own discrimination laws, do not always possess the expertise of federal judges in administering the complex procedural machinery, or in assessing appropriate federal remedies.

Indeed, some states have even "ceded" their jurisdiction over Title VII claims to the federal courts, presumably because the state court judges do not possess the necessary expertise, or because the state court machinery is not capable of handling the increased workload. For example, in *Bowers v. Woodward & Lothrop*, 280 A.2d 772, 774 (D.C. 1971), the District of Columbia Court of Appeals ruled that jurisdiction to remedy Title VII violations lay exclusively with the federal courts. And in *McCloud v. National Railroad Passenger Corp.*, 25 FEP Cases 513, 514 (D.D.C. 1981), the U.S. District Court respected the District's "confine[ment of] its consideration of employment discrimination claims to those arising under of District of Columbia law," ruling that the plaintiff, like Donnelly herein, failed to file his federal claim within 90 days in a court with jurisdiction.

Obviously, this Court should not force states that have declined jurisdiction over Title VII claims to entertain suits that they are not prepared to administer.

3. *Federal Courts Will Be More Hospitable To Federal Claims Than Will State Courts*

This Court's third factor recommending exclusive federal jurisdiction is the "assumed greater hospitality of federal courts to peculiarly federal claims." *Gulf Offshore*, 453 U.S. at 484. The Seventh Circuit below stated:

> [W]e find no basis for the assumption that state courts might not faithfully enforce Title VII. . . *most states have enacted employment discrimination laws. Whether enacted by state government or federal government, the same policy issues underlie employment discrimination laws. Thus from a theoretical viewpoint, state courts are as amenable to Title VII claims as federal courts.* In addition, any concern either party may have over the fairness of the forum is easily remedied. A plaintiff can file the complaint in federal court and a defendant can remove the complaint to federal court.

874 F.2d at 408 (citation and footnote omitted; emphasis added).

Initially, it should be noted that the Seventh Circuit again misstated this Court's standard. This Court in *Gulf Offshore* did not say that jurisdiction should be concurrent unless it can be proven that the state courts will not "faithfully execute" federal law. Rather, the standard is whether federal courts will be more hospitable to federal claims. As shown above, since federal judges are much more experienced with Title VII's complex procedural machinery, they likely will be more hospitable to federal claims. In addition, as also referenced above, just because states have their own discrimination laws does not mean that they will be as hospitable to federal claims as federal courts; most state laws have different procedures and remedies.

Some commentators have explained why federal courts would likely be more hospitable to federal claims than state courts. For example, Professor Mishkin, 53 Colum. L. Rev. at 158 stated:

> Presumably judges selected and paid by the central government, with tenure during good behavior—and that determined by the Congress—and probably even somewhat insulated by a separate building, are more likely to give full scope to any given Supreme Court decision, and particularly one unpopular locally, than are their state counterparts.[9] By the same token, should a district judge fail, or err, a more sympathetic treatment of Supreme Court precedents can be expected from federal circuit judges than from state appellate courts. (footnote omitted).

Professor Mishkin went on:

> Further, *the fact that the lower federal bench is chosen by officials of the national government under the same procedure as the members of the high Court suggests a greater similarity in the interpretation of national law, even on first impression, among the several parts of the national system than between the Supreme Court and any state system, or among the various state tribunals themselves.* Insofar as this is true, it also promotes a more uniform, correct application of federal law in that significant group

[9] The statutory provisions for review by the Supreme Court of state court decisions have always reflected a fear that state judges might be prone to narrow unduly the scope of national power. There is some historical evidence to support that apprehension. See Frankfurter and Landis, *The Business of the Supreme Court*, 4-11 at 189-191 and n.22 (1928); Warren, *Legislative and Judicial Attacks on the Supreme Court of the United States—A History of the Twenty-Fifth Section of the Judiciary Act*, 47 Amer. L. Rev. 1, 161 (1913). The present provisions for appeal (as distinguished from certiorari) seem founded on the same premise. 28 U.S.C. § 1257. Compare the provisions for review of cases coming from the federal intermediate appellate courts. 28 U.S.C. § 1254.

> of cases where, either because of the novelty of the question, disproportionate expense or for other reasons, recourse to the Supreme Court has previously either not been attempted or been precluded.

Id. at 158-159 (footnotes omitted; emphasis added).

Accordingly, it is clear that Yellow Freight established a second *Gulf Offshore* factor, that concurrent federal and state jurisdiction over Title VII claims is incompatible with federal interests. This Court, therefore, is requested to find that the presumption of concurrent jurisdiction is rebutted.

II. THE SEVENTH CIRCUIT ERRED IN RELYING UPON THE AGE DISCRIMINATION IN EMPLOYMENT ACT AND SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT

A. In Misreading The ADEA And This Court's Implementing Decisions, The Seventh Circuit Failed To Note That The Relevant Provisions Of The ADEA Actually Support Exclusive Federal Jurisdiction

The Seventh Circuit erroneously relied upon the Age Discrimination in Employment Act (ADEA) as analogy in finding concurrent state and federal jurisdiction over Title VII claims. In doing so, the court below grossly misread the ADEA and this Court's interpretation of that statute.

To begin, the ADEA, 29 U.S.C. § 621, *et seq.*, contains two separate enforcement schemes: one for *private* sector employees, and a separate provision for employees of the *federal government*. The private sector enforcement scheme is found at Section 7 of the ADEA, 29 U.S.C. § 626. It allows for jury trials, provides that "[a]ny person aggrieved may bring a civil action in any court of competent jurisdiction," and generally incorporates the enforcement provisions of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq. Lehman v. Nakshian*, 453

U.S. 156, 163 (1981).[10] Significantly, Section 16(b) of the FLSA, 29 U.S.C. § 216(b), specifically contemplates concurrent jurisdiction: it permits lawsuits in "any Federal or State court of competent jurisdiction." *See Oscar Mayer & Co. v. Evans*, 441 U.S. 750 (1979).

In contrast, the federal employee section, Section 15, contains enforcement language similar to that found in Title VII.[11] Specifically, Section 15(c) provides:

> Any person aggrieved *may* bring a civil action in any *Federal district court* of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this Act.

29 U.S.C. § 633a(c) (emphasis added). As this Court noted in *Lehman*, Section 15's enforcement scheme was patterned after Title VII's, not the FLSA's. 453 U.S. at 164 n.12. As evidence of this Congressional intent, *Lehman* noted that lawsuits by federal workers do not permit jury trials, and, significantly, that Congress decided to "*limit jurisdiction to the federal district courts.*" *Id.* (emphasis added). This Court further explained that Congress may have decided to confine jurisdiction under the ADEA to federal courts "so that there would not be trials in state courts of actions against the Federal Government." *Id.*

The Seventh Circuit below inexplicably relied, not upon Section 15 of the ADEA, the section modeled after Title

[10] Specifically, the ADEA's private sector enforcement provision, 29 U.S.C. § 626(b), incorporates sections 211(b), 216—except for 216(a)—and 217 of the FLSA. Importantly, section 216(b) authorizes lawsuits "in any Federal or *State* Court of competent jurisdiction." (Emphasis added.) Clearly, therefore, this statutory language is in no way analogous to the Title VII language. As noted earlier, Title VII's language mentions federal courts, but makes no mention whatsoever of state courts.

[11] Again, the Title VII language relevant to this inquiry is that "[e]ach United States district court . . . shall have jurisdiction of actions brought under this subchapter." 42 U.S.C. § 2000e-5(f)(3).

VII's enforcement scheme, but rather on Section 7. Indeed, the Seventh Circuit stated:

> Given the extensive similarities between [the private sector provisions of Title VII and the ADEA], and the fact that the state courts have jurisdiction over private-sector ADEA claims, it seems incongruous to assume that state courts are incompetent to adjudicate Title VII claims.

Id. at 409. Such reliance upon Section 7 makes no sense. Even though it relies on the ADEA for its conclusion, the Seventh Circuit states that "we do not find the different jurisdictional language of Title VII and the ADEA significant." *Id.* at 408 n.9. To the contrary, the different statutory language makes all the difference in the world, for it illustrates that Congress knows how to express clear intent to convey concurrent jurisdiction when it means to do so. Again, Section 7 incorporates Section 216(b) of the FLSA, which *specifically permits* suits to be brought in both state and federal courts. The relevant analogy is Section 15, which contemplates exclusive federal jurisdiction.

Accordingly, not only did the Seventh Circuit err in relying upon the ADEA to support the idea of concurrent jurisdiction for Title VII, but the ADEA actually points in the opposite direction: that jurisdiction over Title VII should be exclusively federal. Section 15, the language that more closely mirrors Title VII, does not allow concurrent jurisdiction. *Valenzuela*, 739 F.2d at 436 (ADEA Section 15 suits are consistent with the jurisdictional references in Title VII).

B. The Seventh Circuit Also Erred In Relying Upon Section 301 Of The Labor Management Relations Act

Similarly, the Seventh Circuit erred in relying upon federal labor law as analogy and support for its decision. In this regard, the Seventh Circuit stated:

> Even when federal law is not clearly developed or preempts state law, jurisdiction may be exercised concurrently. For example, even though § 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. § 185, authorizes federal courts to fashion a body of federal law for the enforcement of collective bargaining agreement, *Textile Workers v. Lincoln Mills*, 353 U.S. 448 (1957), state courts exercise jurisdiction over claims brought under § 301(a) concurrently with the federal courts.

874 F.2d at 407 n.7. In doing so, the Seventh Circuit cites this Court's decision in *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502 (1962).

But Section 301, and this Court's reading of it in *Charles Dowd*, indicate a clear distinction with Title VII—Congress specifically intended the state courts to interpret section 301. Section 301(a) states that "[s]uits for violation of contracts between an employer and a labor organization . . . may be brought in any district court of the United States having jurisdiction . . . ." This Court in *Charles Dowd*, 368 U.S. at 512, pointed out that the legislative history made sure that "state court jurisdiction would not be ousted by enactment of federal law." A colloquy between Senators Murray and Ferguson (the bill's spokesman) clearly indicates that the bill "takes away no jurisdiction of the State Courts." *Id.* As this Court noted in *Charles Dowd*, 368 U.S. at 508, "[t]he legislative history makes clear that the basic purpose of § 301(a) was not to limit, but to expand, the availability of forums for the enforcement of contracts made by labor organizations." [12] In stark contrast,

[12] This Court noted in *Alexander v. Gardner-Denver*, 415 U.S. at 48-49, that Title VII also was designed to "supplement, rather than supplant, existing laws and institutions relating to employment discrimination." *See* decision by the Seventh Circuit below, 874 F.2d at 407 ("Title VII was never intended to be the exclusive remedy"). But in *Alexander*, as noted above, this Court specifically listed the forums available to Title VII plaintiffs, and state courts were not among those listed.

as fully explained above and in Petitioner's brief at pp. 13-32, no reference to concurrent state court jurisdiction was made whatsoever during the 1964 or 1972 debates over Title VII.

A better analogy to Title VII than Section 301 are the procedural schemes under federal labor law that the Seventh Circuit below *failed* to mention. For example, under Section 10(e) of the LMRA, enforcement of orders guaranteeing Section 7 rights is vested *exclusively* in the federal courts. 29 U.S.C. § 160(e) (the National Labor Relations Board "shall have power to petition any court of appeals of the United States or . . . any district court . . ." for enforcement of an NLRB order). *See The Developing Labor Law* (BNA) 1695 (Morris, ed. 1983). Similarly, petitions for review of final orders pursuant to Section 10(f) are also exclusively with the federal courts. *Id.* at 1700-01. 29 U.S.C. § 160(f). In addition, Section 10(j) injunctions may be obtained only in a "United States district court." 29 U.S.C. § 160(j). *Developing Labor Law* at 1638. Finally, suits against the NLRB for actions contrary to the NLRA must be brought in a "federal district court." *Employment Coordinator* (Research Institute of America) at LR 44,003. *See Leedom v. Kyne*, 358 U.S. 184 (1958).

It is crucial for this Court to understand the reasons why Section 301 claims can be heard in state courts, but that other suits involving federal labor law cannot. First, of course, is the legislative history cited in *Charles Dowd* permitting Section 301 suits in state courts. Just as important is the policy rationale. Section 301 is merely a mechanism for enforcing a contract between a company and a union. Thus, the idea of concurrent jurisdiction makes sense: if a state court makes a mistake in interpreting a contract between two parties, only the parties will be affected. The idea of exclusive federal jurisdiction over other NLRB matters, of course, is that federal policy making (affecting large numbers of people

not directly parties to the suit) ought to be in the hands of judges who are skilled in the interpretation of federal labor law, and who will assure uniformity and predictability. The similarities with Title VII are obvious—interpretation of such a complex statute should be in the hands of skilled federal judges.

Thus, since the Seventh Circuit erred in relying upon the ADEA and Section 301 of the LMRA, and since the relevant provisions of those statutes actually *support* the idea of exclusive federal jurisdiction, this Court should reverse the decision of the Seventh Circuit below.

CONCLUSION

For the foregoing reasons, this Court should reverse the decision of the Seventh Circuit below, and hold that jurisdiction over Title VII claims is exclusively federal.

Respectfully submitted,

ROBERT E. WILLIAMS
DOUGLAS S. MCDOWELL
GAREN E. DODGE *
MCGUINESS & WILLIAMS
Suite 1200
1015 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 789-8600
Attorneys for Amicus Curiae
Equal Employment
Advisory Council

December 21, 1989

* Counsel of Record